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REMARKS AT MONDAY AFTERNOON SESSION

By James R. Silkenat, Esquire
President of the American Bar Association

*The Monday afternoon session
of The American Law Institute convened in the
Ritz-Carlton Ballroom,
Washington, DC, on May 19, 2014.
President Roberta Cooper Ramo presided.*

President Ramo: Well, this has been a wonderful day all around and it will be continued by our being addressed by the President of the American Bar Association, Jim Silkenat.

I have known Jim for a very long time, probably longer than either one of us would talk about. Jim is a truly distinguished international lawyer. People say that easily and I often think when you talk to law students, Jim, they all want to be international lawyers, and now I have a picture to give them of somebody who actually is.

Jim is currently the President of the American Bar Association, as I said. He is a partner in the law firm of Sullivan & Worcester, which I normally mispronounce, but now I know it is pronounced in the same way as Bertie Wooster; if you haven't read those books you need to.

Jim has had a variety of positions in the most important international legal organizations of our time. He has not only been in private practice and very successful, he has written many books and articles about international law. He is a graduate of a law school known to me, the University of Chicago Law School, and I think it was a pretty good place when he was there for sure, and he has been a member of the Council on Foreign Relations. He was Chair of the Lawyers Committee for International Human Rights.

He has done many, many things. But what I thought was the most interesting and important to tell you about Jim today is about your response at a time when the American legal system is really challenged on two fronts. There are questions about the nature of legal education in the United States that have been fueled in part because of the inability of so many graduates to get jobs on the one hand and, on the other hand, the apparent inability of many Americans to find the lawyers that they need to go about their daily work. And in response to this enormous problem on the domestic front, Jim appointed an incredibly distinguished task force that included many ALI members—I think including Bob Mundheim, the benefactor of your cake today—to try to figure out how it is that we match those lawyers who have more than enough time to do the work of the American people and the American people who need to find lawyers and the way to

do that, and he has been incredibly able in leading the American Bar Association to try to find the answers to these enormous things.

So it is a great pleasure for me to introduce, and as always an honor for me to introduce, the President of the American Bar Association, our member, Jim Silkenat. (*Applause*)

President James R. Silkenat: Roberta, thank you very much. It is an honor and a pleasure to be with you here today. The ALI is a valued partner of the ABA and a member of our House of Delegates, as represented by your exceptional delegate Mike Traynor, whom I was sitting in front of earlier today.

At lunch recently with a colleague of mine, my colleague was complaining about a particular client who was interfering in the closing of an ongoing transaction and generally becoming a real pest, an awkward situation that I am sure none of you have ever had with clients who were quite like that.

Well, my colleague said that this guy was a problem because it was clear he had too much time and too much money for his own good. Wow. I realized immediately that that was a problem I would really like to have: too much time and too much money. There is never enough time or money for most people or for most institutions in solving their most difficult problems.

Like Roberta and all other ABA Presidents before me, it is a great privilege to serve the legal profession as President of the ABA. In a year or two, we get to focus all of our time and some of the ABA's money on a range of difficult issues for the American legal profession, for our justice system: diversity, voting rights, gun violence, immigration, judicial independence, the death penalty, cyber security, attorney–client privilege, and legal education—a long list of important and difficult issues.

During the past year and continuing into the next one, a special priority of the ABA has been to address what I call America's access-to-justice paradox. It is a problem that affects all parts of the legal profession and our justice system. It is not about black-letter law, but it is about how we react to serious problems in our justice system.

Our profession needs to resolve two seemingly contradictory concerns, the enormous unmet legal needs across the United States and the large number of young lawyers who are currently underemployed and looking for experience and training. The need for legal services for poor Americans has never been greater. Nearly one in five Americans now qualifies for legal assistance. Too many low- and moderate-income people cannot afford legal representation, and as a result they are denied the justice they deserve.

At the same time, too many recent law-school graduates are without good jobs or the practical experience they need to be effective lawyers. Only 57 percent of law students from the class of 2013, and this is up from the year before, are employed full time in a job that requires passage of a bar exam. Some law-school graduates are working in coffee shops, others are unemployed. Taken together, these two issues have become the access-to-justice paradox that I mentioned that is threatening the very core of our justice system.

So how do we address a problem that defies the law of supply and demand? We, as lawyers, judges, teachers, and leaders in the legal profession, must work together to find solutions, and with 400,000 members the ABA is trying to play a leadership role.

My first action as ABA President was to create the ABA's Legal Access Job Corps, which is working to improve the fit between the needs of our profession and the needs of our society. We are committed to looking at the dearth of legal jobs and the large number of unmet legal needs as one problem, instead of as being in two separate silos the way we have always looked at them before.

We cannot afford to be a nation where the legal needs of a large portion of our citizenry are not being met in the way our Constitution requires. The demand is so great that nationally only one legal-aid attorney is available for every 6400 low-income people.

Similarly, there are significant geographic regions of our country where the lawyer population is scant or nonexistent, and where the local population, for all practical purposes, does not have timely or proximate access to a lawyer.

The New York Times reported last year that when a lawyer in Bennett County, South Dakota, retired after 64 years in practice, there was not one attorney to take his place. The closest working lawyer was 120 miles away, and in a country founded on the promise of justice for all, Americans without lawyers go without justice.

Meanwhile our young lawyers are looking for work. One attorney in California posted an ad on Craigslist that read, “Quite frankly, I am quite desperate and willing to learn and dedicate myself to any area of the law.” The Legal Access Job Corps Task Force is looking at a full range of programs now in place, some set up by bar associations, some by law schools, a wide range of programs, from rural outreach programs, nonprofit fellowships, modest-means programs, and incubators that will help struggling lawyers meet the legal needs of the underserved.

What we have seen actually is encouraging. For example, in South Dakota, a bill was successfully passed through the state legislature in support of a program to recruit young lawyers to work in rural areas where sufficient lawyer coverage did not exist. The program is now up and running, with young lawyers from all over the country showing interest, and there are a number of other states that are looking to develop similar programs.

Even in New York State, where there are seemingly more than enough lawyers, big firms, big cities, there are parts of the state where the population does not really have access to a lawyer. This is just one example of what took place in South Dakota: a bar association coming up with a creative response to an issue.

But there are others, and it is not just bar associations. It is law firms, bar foundations, other stakeholders, law schools that will help make a difference here. The ABA’s Legal Access Job Corps has undertaken an outreach effort among an array of stakeholders within the legal community designed to stimulate more of these activities. During the past several months, we have created a comprehensive catalog of state and local incubator programs and other innovative approaches. We have produced a video on this that is really quite dramatic. The

video has now been viewed by thousands of bar leaders around the country, and Chief Judge [Jonathan] Lippman in New York has made it important viewing for all New York state judges. If you have not seen it, I encourage you to take a look at it on the ABA website.

We have also launched an ABA catalyst grant program to strengthen these programs and produce new ones, which provides start-up funds to support innovative programs that enlist recently admitted lawyers in providing legal services to persons of modest means. We have received more than 100 applications just this last week for those grant funds, the first round of them, and we are looking to go forward with a second round here in the coming months.

There are two other important related efforts under way with respect to what the ABA is doing for the nation's law graduates and access to justice. I am just going to very quickly cover them. First, and many of you know of this, the ABA Task Force on the Future of Legal Education released its final report earlier this year. The Task Force was created in the summer of 2012 and was chaired by former Indiana Chief Justice Randy Shepard. It was charged with making recommendations to the ABA on how various legal-education groups can take concrete steps to address issues concerning the economics of legal education and its delivery.

The Task Force painstakingly prepared its report and recommendations by reviewing a whole variety of things and meeting with hundreds of legal educators and law students around the country. It held a number of public hearings and conducted a webcasted mini conference in which many of you participated. These efforts resulted in the final report, which calls for redesign of the financial model now prevalent in law schools, revisions to the system that accredit law schools, and expansion of opportunities for delivery of legal services, all important steps.

The second effort is an extension of one aspect of that first Task Force's report, and earlier this month we formed the new ABA Task Force on the Financing of Legal Education. This was a discrete topic that Randy's group did not feel qualified to handle. So we have

appointed this new group, led by former ABA President Dennis Archer, which is charged with looking at the cost of legal education for students, the financing of law schools, student loans, educational debt, all of that package of issues. It will also consider current practices of law schools regarding the use of merit scholarships, tuition discounting, and need-based aid.

The U.S. legal education system is widely admired, and I often say in meetings around the country that it is the best in the world. But it needs to evolve to match up with the changes that are taking place for all of us as practitioners. What we are doing changes daily, and law schools have to match up with those changes and evolve, too, and my sense is they are starting to do that.

To practice law properly is to engage in public service of the highest order. As an association and as a profession, we will continue to seek pragmatic ways to address today's economic and marketplace realities.

So I want to thank you for allowing me to share these ideas with you today. There is much work for us to do. It is important work and I am very pleased that we are going to get to do it together. Thank you very much. (*Applause*)

President Ramo: You can see why so often the American Bar Association comes to ALI members to lead its very important responses. I was just telling Jim that I don't know if you read *The New York Times* the other day, but the ABA, showing that it is on the technologic cutting edge, and he was quoted broadly, has a new app that only a small number of the people in this room will need, but it is an important one and it is for those of you who go in for medical care and they say, "Do you have a health-care directive?" And I know that does not apply to anyone but me in this room, and of course we all do but none of us have it with us. So the ABA now has an app, if you go on their website, that is encrypted that lets you put it on your smartphone. You can just hold it up and they will stop asking you that question, and I would just like to say thank you for that, Jim.

So let us move on from solving important problems for the legal profession, in the United States and abroad, to Sentencing.

Susan Appleton, will you come up, and Kevin, and I see you over there. Great. Cecelia. Thank you very much.

Thank you, Jim.